



Ruth Johnson
Oakland County Clerk/Register of Deeds
www.oakgov.com/clerkrod

Oct. 14, 2009

Kathy Angerer
Chairperson
Ethics and Elections Committee
P.O. Box 30014
Lansing, MI 48909-7514

Dear Chairperson Angerer,

Every year, thousands of ballots are sent to our overseas military personnel, no matter where they are stationed, so they can participate in one of the cornerstones of democracy – voting.

Unfortunately, because of overseas mailing delays, many of them are not given enough time to return their ballot to Michigan in time to be counted on Election Day. In a national report issued earlier this year, Michigan was named as one of 16 “No Time to Vote” states for overseas troops. This is unacceptable – we must protect the right to vote for people who are sacrificing, away from their homes and their families, protecting our freedom.

That is why House Bill 5279 is so critical. This legislation would allow local clerks to send ballots by fax or email to overseas troops, virtually eliminating mailing delays. This system would provide the very same safeguards and integrity used in the handling of local ballots, including signature verification. Under this legislation, the state will put technology to work, the votes of overseas military personnel will get home in time to be counted and local communities will save expensive postage costs.

Critics have suggested that Michigan simply wait for the federal government to act. Unfortunately, federal legislation to improve overseas voting has been introduced in three different sessions of Congress but failed to move forward. Michigan can't wait on this – House Bill 5279 is an easy, workable solution to the problem and will help ensure that everyone, especially our overseas troops, can celebrate their freedom by having their vote count on Election Day.

More than a dozen veterans' organizations in Michigan support this legislation, including the American Legion, the Catholic War Veterans, AMVets, the Jewish War Veterans, Vietnam Veterans of America, the Veterans of Foreign Wars and the Paralyzed Veterans of America. Please see their attached letter of support, as well as newspaper editorials from around the state.

On behalf of Macomb County Clerk Carmella Sabaugh and Wayne County Clerk Cathy Garrett, we would appreciate your support for House Bill 5279. If I can be of any further assistance, please do not hesitate to call me or my deputy, Chris Ward, at (248) 858-0560.

Sincerely,

A handwritten signature in cursive script that reads "Ruth Johnson".

Oakland County Clerk/Register of Deeds

Advertisement



Clerks: Overseas military ballot-count needs fix

Posted 7/2/2009 5:40 PM ET

By David Aguilar, Associated Press Writer

STERLING HEIGHTS, Mich. — Clerks from Michigan's three largest counties and a state legislator proposed a plan on Thursday that they say would speed the process of sending election ballots to overseas state residents and ensure those ballots are counted.

Oakland County Clerk Ruth Johnson said Michigan is one of 16 states that does not give residents who are overseas in the military enough time to vote, according to a study by The Pew Center on The States.

Johnson said it now takes 57 days for Michigan clerks to verify, mail and receive a return overseas ballot. She said the proposed "Operation Our Troops Count" measure, supported by clerks in Wayne and Macomb counties, would pare that by at least 24 days.

"Every day young people are risking their lives overseas ... the least we could do is honor their right to vote," Johnson, a Republican, said during a news conference in the Detroit suburb of Sterling Heights. "In most cases, Michigan's out-of-date system simply does not allow enough time for our military to vote."

Under the proposal, Johnson said, eligible overseas voters would apply for absentee ballots from their local clerk via fax or the Internet. Once a ballot has been verified, it would be sent electronically, printed, filled out manually and signed by the voter. The ballot would then be returned by mail to the local clerk's office and counted on election day with other absentee ballots.

The time and money saved by having local clerks send ballots electronically is what would make the difference, said Macomb County Clerk Carmella Sabaugh, a Democrat.

"There's simply no reason why we can't get those ballots to our military in time," Sabaugh said.

But improving Michigan's "broken" system requires amending state election law, said Rep. Vince Gregory, a Democrat from Southfield who is a former U.S. Marine and a Vietnam veteran. He plans to introduce the plan to the Legislature this month. He said leaders in the Democratic-controlled House have assured him that the proposal, which will be voluntary for local clerks, will have support and he does not believe it will meet resistance in the Republican-led Senate.

"They are definitely on the right track," said Kelly Chesney, a spokeswoman for Republican Secretary of State Terri Lynn Land, adding that security remains the primary concern when sending ballots electronically. "We are also looking for ways to compress the schedule to give our voters more time and have been working on a similar plan."



First Sergeant Laura Rios, an Air Force recruiter who spent nearly 12 years of her 26-year military career overseas, said changing the system is essential. The 44-year-old Macomb County resident who planned to retire on Friday said she has been voting since she was 18, but often was disheartened when late-arriving overseas ballots rendered her vote meaningless.

"I want my president's vote to count," Rios said. "I want my Michigan vote to count."

David Springsteen, deputy chief of staff for Democratic Wayne County Clerk Cathy Garrett, said too often overseas military ballots are not counted, including during last November's presidential election.

"The sad reality is, weeks after the election was over, the votes were all counted, but ballots continued to come in from our soldiers overseas. Their votes didn't count."

Alabama, Arkansas, Connecticut, Georgia, Maine, Massachusetts, Missouri, New Hampshire, New York, Oklahoma, South Dakota, Tennessee, Texas, Utah, Wyoming and Washington, D.C., also didn't give overseas military voters enough time to vote, according to the Pew Center study. All told, the study said 25 states and Washington, D.C., need to improve their overseas voting process.

For active-duty military serving overseas, the voting process takes an average of 29 days to complete among states that do allow enough time to vote, according to the study. But states identified as allowing "no time to vote" require an average of 66 days. In Arizona and Kansas, the process can be as short as eight days. In Alabama, it can take 88 days.

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HOUSE BILL 5279:

– STREAMLINING MILITARY VOTING

PROBLEM:

- According to the non-partisan Pew Center on the States, Michigan is one of a handful of “No Time to Vote” states for military and overseas voters.
- Nearly 1 million military and overseas ballots were requested for the November 2006 election, but less than one-third were actually counted nationwide.
- Our local city and township clerks are extremely conscientious and do all they can, but are working with an antiquated system. Michigan’s voting process for overseas voters takes, on average 57 days – 12 days longer than the recommended minimum time to ensure the ballots can reach home in time to be counted.

SOLUTION:

- House Bill 5279 was introduced by State Rep. Vince Gregory with bipartisan support. Ten major veterans groups have endorsed the bill, including the VFW and the American Legion.
- This bill would allow for electronic transmission of blank absentee ballots to overseas and military voters. The voter would then print the ballot out, fill in their choices and return it in a secured envelope that would ensure the integrity of the process and the privacy of their vote.
- This measure would eliminate 24 days from Michigan’s lengthy process, giving our overseas and military voters enough time to ensure their ballots get home in time to be counted.
- While federal legislation has been introduced in three sessions of Congress, it has not been enacted. In the meantime, Michigan could take this common-sense approach now to save time and postage. It would ensure we already have measures in place should federal legislation be enacted.



Department of Michigan

Ruth Johnson:

At a meeting of the Commander's Group the following veteran's organizations voted to support your efforts on behalf of "Operation: Our Troops Count".

American Legion
AMVETS
Catholic War Veterans
Jewish War Veterans
Marine Corps League
Military Order of the Purple Heart
Non Commissioned Officers Association
Polish Legion of American Veterans
Veterans of Foreign Wars
Vietnam Veterans of America

My adjutant will be calling the Paralyzed Veterans of America to get their support. They were not at our meeting on July 10, 2009. Please feel free to call me if I can be of any further assistance.

A handwritten signature in cursive script, reading "Carrie Jackson", is positioned above the printed name.

Carrie Jackson

State Commander

The American Legion

The American Legion
Department of Michigan
212 N. Verlinden
Lansing, MI 48915
517 371-4720

August 24, 2009

<http://detnews.com/article/20090824/OPINION01/908240305>

Let soldiers vote: State should allow military members overseas to receive absentee ballots by e-mail and fax

State lawmakers can help members of the U.S. military from Michigan who are serving abroad exercise their right to vote more easily with a relatively simple fix to state election laws. Clerks Carmella Sabaugh of Macomb County, Ruth Johnson of Oakland County and Cathy Garrett of Wayne County are urging legislators to allow servicemen and women to receive their absentee ballots by e-mail or fax, which could be returned by secure surface mail to their local clerk.

In a joint statement issued last month, the three said a member of the military's request for an absentee ballot, the surface mailing of the ballot and its return could take up to six weeks. Too often, this means the ballots don't reach local clerk's offices in time to be counted. Sabaugh noted in the statement that in the 2008 election, nearly 30 percent of the absentee ballots mailed overseas -- 225 of 774 -- weren't returned on or before election day. The three attributed the problem to overseas mail handling.

The three in the statement noted that the clerk's offices in Oakland and Macomb have staff members assigned to track absentee ballots to make sure they are properly matched with voters and that this process includes members of the military serving overseas. The ballots would still be subject to signature checks and other means to prevent vote fraud.

Johnson points to a Pew Center on the States report noting that Michigan is one of 16 states that don't allow enough time for service members to vote. This is not good company for Michigan.

Legislation has been prepared by State Rep. Vincent Gregory, D-Southfield, and should be acted on promptly. Johnson, a Republican, is joined by two Democrats, Sabaugh and Garrett, in seeking this change. As Johnson notes, it's not a partisan issue -- it's just the right thing to do.

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The Oakland Press

EDITORIAL: Bill makes it easier for those in military to vote

Published: Tuesday, July 14, 2009

Proposed legislation that would permit county clerks to use electronic means — e-mail and fax machines — to send absentee ballots to Americans abroad is expected to be introduced soon in the Michigan House. The legislation won't cost taxpayers any money and it makes sense, so approval should be a no-brainer, even for folks in Lansing.

Rep. Vincent Gregory, D-Southfield, is one of the main sponsors of the bill, which won't be given a number until it is introduced. Also, a major supporter is Oakland County Clerk Ruth Johnson.

Basically, the bill would be geared toward military personnel serving in foreign countries. Currently, state law prohibits sending absentee ballots electronically. Consequently, it must be done through regular mail. The problem comes for those who vote absentee and are overseas. More than 70 percent of our nation's troops can't vote because of time constraints, Johnson said. Michigan is one of 16 states that doesn't give overseas voters enough time to receive and return the absentee ballots.

According to a national report issued earlier this year by the Pew Center on the States, based in Washington, D.C., it takes a Michigan ballot 57 days to be sent overseas and returned. Often that's not enough time to be counted by an election. The Pew Center said the best return time was eight days, recorded by New Mexico, with everything being sent and returned electronically.

"Other states have a system that works quite well," Johnson said. "It's not that we have to reinvent the wheel; we just have to use the best practices available." She noted that Michigan would alter New Mexico's system a bit. For security reasons, the ballot would be sent electronically, it would be returned in hard copy form.

The revised system still would cut 24 days off the process. While 57 days was considered too long a time period, the minimum reported by Pew for successful voting was 45 days. So, the 33-day time frame would increase the chances of those in the military having their vote counted. The Pew Center reports that in 2006, only 27 percent of military voters had ballots cast and counted. Oakland County had a better percentage, but it is not as good as with electronic ballots, which had an 86 percent rate for votes counted.

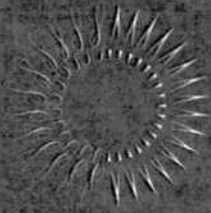
"A lot of people don't even ask for an absentee ballot because they know they won't get it back in time," Johnson said.

The bill has bipartisan support, as evidenced by Gregory, a Democrat, and Johnson, a Republican. Also supporting the legislation are Carmella Sabaugh and Cathy Garrett, Macomb and Wayne county clerks, respectively, along with Oakland County Commissioner Shelley Taub, R-West Bloomfield, who directed the passage of a resolution by the county commissioners.

"The legislation has been stuck," Johnson said. "It's getting (Lansing officials) off the dime to do it."

She noted the Pew Report came out in January and there are major city and school elections this November. As Johnson said, "These are people willing to make the ultimate sacrifice. The least we can do is make sure their votes count. This is an easy problem to solve."

We agree and hope legislators can stay focused long enough to quickly approve the legislation.



THE
PEW
CENTER ON THE STATES

No Time to Vote

CHALLENGES FACING AMERICA'S
OVERSEAS MILITARY VOTERS



JANUARY 2009

Executive Summary

Thanks to a federal law passed in 1986—the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)—an estimated six million military and overseas civilian voters have the right to cast absentee ballots in America’s federal elections, including last year’s historic presidential contest. But it is the laws and practices of the 50 states and the District of Columbia that determine how and when these voters participate—and, most important, whether they can successfully cast a ballot.

Many state and local election officials are doing a remarkable job trying to ensure that American military voters serving around the world are able to participate in our federal elections. But *No Time to Vote: Challenges Facing America’s Overseas Military Voters* shows that 25 states and the District of Columbia have to improve their absentee voting process for their military citizens abroad. We do not yet know how many military voters stationed overseas cast absentee ballots in the 2008 elections, or how many of those ballots actually were counted. But according to our analysis, those who may have voted successfully last fall did so in the face of procedural hurdles and tight deadlines in half the states and Washington, D.C. These challenges ranged from blank ballots being mailed out too late to completed ballots being returned by fax or e-mail, which raises questions about the privacy and security of the votes. In fact, given our conservative assumptions, the remaining states, with time to vote, would also benefit from giving their voters additional time to request and return their ballots.

Our Focus

Comprehensive, solid data on absentee voting for military and overseas voters are hard to come by, but some studies suggest states’ systems are not working as well as they should. According to the federal Election Assistance Commission, of the estimated one million ballots distributed to UOCAVA voters for the 2006 election, just one third actually were cast or counted.¹ No doubt

25 states and the District of Columbia have to improve their absentee voting process for their military citizens abroad.

some of these voters simply decided not to return their ballots—but surveys of military personnel show that this population historically has been frustrated by obstacles in the process. Among military personnel who reported not voting in 2004, 30 percent said they were not able to vote because their ballots never arrived or arrived too late. Another 28 percent said they did

EXECUTIVE SUMMARY

not know how to get a ballot, found the process too complicated, or were unable to register.²

Given these concerns, we sought to assess whether states are providing military and overseas civilian voters with enough time to vote and have their votes counted. We looked at the three groups of voters covered under UOCAVA: civilians living overseas; military personnel stationed in the

United States and their dependents; and military personnel stationed abroad and their dependents.³ Our analysis ultimately focuses only on military voters based abroad. Unfortunately, we lacked the necessary information—reliable estimates of international mail time for civilians, among other data—to complete the assessment for overseas civilian voters. We also could not assess the experience of military voters stationed in the U.S.;

Exhibit 1
STATES' TIME TO VOTE STATUS

State	Military Voters Serving Overseas	State	Military Voters Serving Overseas
Alabama	No Time to Vote	Montana	Time to Vote
Alaska	Time to Vote, but with concerns	Nebraska	Time to Vote
Arizona	Time to Vote, but with concerns	Nevada	Time to Vote
Arkansas	No Time to Vote	New Hampshire	No Time to Vote
California	Time to Vote, but with concerns	New Jersey	Time to Vote
Colorado	Time to Vote, but with concerns	New Mexico	Time to Vote
Connecticut	No Time to Vote	New York	No Time to Vote
Delaware	Time to Vote	North Carolina	Time to Vote
District of Columbia	No Time to Vote	North Dakota	Time to Vote
Florida	Time to Vote	Ohio	Time to Vote
Georgia	No Time to Vote	Oklahoma	No Time to Vote
Hawaii	Time to Vote, but with concerns	Oregon	Time to Vote
Idaho	Time to Vote	Pennsylvania	At Risk
Illinois	Time to Vote	Rhode Island	Time to Vote, but with concerns
Indiana	Time to Vote	South Carolina	Time to Vote
Iowa	Time to Vote	South Dakota	No Time to Vote
Kansas	Time to Vote	Tennessee	No Time to Vote
Kentucky	Time to Vote	Texas	No Time to Vote
Louisiana	Time to Vote	Utah	No Time to Vote
Maine	No Time to Vote	Vermont	At Risk
Maryland	Time to Vote	Virginia	Time to Vote
Massachusetts	No Time to Vote	Washington	Time to Vote
Michigan	No Time to Vote	West Virginia	Time to Vote
Minnesota	At Risk	Wisconsin	Time to Vote
Mississippi	Time to Vote	Wyoming	No Time to Vote
Missouri	No Time to Vote		

Source: Pew Center on the States 2008

LEGEND

No Time to Vote: States that send out their absentee ballots after the date necessary for military voters to meet all of the required deadlines.

At Risk: States where voters have only five days or less of extra time (one business week or less) to complete the process.

Time to Vote, but with concerns: States that afford time to vote, but at a price. Overseas military voters only have time to vote if they return their completed ballots by fax or e-mail—practices that raise concerns about voters' privacy and the security of the ballot.

Time to Vote: States that provide more than five days of extra time—that is, beyond the absolute minimum required for returning a ballot—in their voting process to allow for delays.

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we did not have reliable estimates for domestic military mail delivery, and with an unknown number of uniformed personnel using the U.S. Postal Service (rather than military mail) to cast their absentee ballots, we faced significant obstacles in calculating regular mail delivery times.

For each of the 50 states and the District of Columbia, we calculated the amount of time it takes for overseas military voters and election officials to complete each step of the absentee voting process. Next, we determined if all the steps could be completed in time for that state's election deadlines. We then assessed whether the state's overseas military voters have enough time to vote (Exhibit 1).

Findings

- All told, 25 states and the District of Columbia need to improve their absentee voting process for overseas military voters.
 - Sixteen states and the District of Columbia do not provide enough time to vote for their military men and women stationed overseas. These states send out their absentee ballots after the date necessary for military voters to meet all of the required deadlines.
 - An additional three states are at risk of not allowing their overseas military residents enough time to vote, providing just five days or less of extra time to accommodate any delays in the process.
 - Thirty-one states provide enough time for their military residents stationed overseas to vote. But 19 of these allow voters to return their completed ballots by fax or e-mail—raising concerns about access to this
- technology and privacy and security of the votes. In 13 of the 19 states, the problem is easily eliminated: overseas military personnel still have time to vote even if they send back completed ballots by traditional mail. But that is not the case in the remaining six states. If they cast their ballots through regular mail, military voters from Rhode Island, for example, will not have time to vote—and those from the remaining five states are at risk of being disenfranchised because they are afforded fewer than five days of extra time to accommodate potential delays. In effect, military voters from these six states must risk the privacy and security of their ballots to ensure their votes will get counted.
- Given our conservative assumptions, all states would benefit from providing their overseas military voters additional time to request and return their ballots.
- For active-duty military serving overseas, the voting process takes an average of 29 days to complete in states that allow time to vote. For voters abroad hailing from “no time to vote” states, the process takes 66 days on average. The length of the process, however, can vary widely. For example, in Arizona and Kansas, the process can be as short as eight days, while it can take overseas military voters from Alabama 88 days from start to finish.
- Whether a state's absentee voting process allows enough time depends largely on how well the different steps in the process work together. So fixing one step may not be enough if other steps are not working well. In states where laws and practices have been cobbled together over decades, the problem is a failure to take into account how the system works as a whole.

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Lessons Learned

Why do so many states give their military personnel insufficient time to vote? There is no one reason; states' absentee voting systems for these citizens are diverse and complex, so what might cause a problem for one state may work just fine for another. But our study identified three important lessons:

1. When a state's process relies entirely or partially on mail delivery, military voters need more time to complete all of the steps required and are less likely to have time to vote. *Simply sending blank ballots out via fax or e-mail can give military citizens abroad enough time to complete the process.*
2. The later a state's absentee ballot is mailed to military voters, the less likely they will have time to vote. *States should seek to distribute blank ballots to their overseas military voters as early as possible.*
3. The earlier the state's deadline for returning a completed ballot—especially if the state mailed its absentee ballots out late—the less likely a military voter will have time to vote. *States should provide more time for completed ballots from military voters overseas to reach local election offices.*

Potential Reforms

We analyzed whether four particular policy options would benefit the 25 states and the District of Columbia that need to improve their voting process for military absentee voters:

- expanding the use of the Federal Write-in Absentee Ballot, a back-up measure when military voters do not receive their state ballots in time;
- allowing election materials to be transmitted electronically;
- building at least 45 days into the process for ballots to travel between voters and election offices; and
- eliminating a requirement that military voters have their completed ballots notarized before returning them.

Of 10 legislative changes proposed by the U.S. Department of Defense's Federal Voting Assistance Program, these four are the most focused on streamlining and shortening the voting process for both voters and election officials.

Our analysis shows that all four policy options can help, although not every reform is right for every state. Two of the reforms are particularly noteworthy—but neither is a magic bullet.

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First, every state would ensure its overseas military personnel time to vote by adopting a fully electronic process for transmitting all election materials between voters and election offices. As noted earlier, important questions have been raised about the privacy and security of returning completed ballots by fax or e-mail—but the odds of successfully voting improve for military citizens even if a state simply sends out blank ballots electronically rather than by traditional mail. In fact, we found that 13 “no time to vote” jurisdictions would ensure adequate time by adopting this reform.

Second, every state would ensure time to vote by expanding its use of the Federal Write-in Absentee Ballot—although this tool is only a back-up measure and has limitations.

No Time to Vote is supplemented by individual fact sheets for the 26 jurisdictions that need to improve their voting process for military absentee voters. The fact sheets are also available on our Web site at www.pewcenteronthestates.org.

These materials are products of the Pew Center on the States’ Make Voting Work project, which partners with state and local election officials, the private sector and others to foster an election system that achieves the highest standards of accuracy, convenience, efficiency and security. To ensure our election system works optimally for military and civilian voters overseas, Make Voting Work publishes case studies and reports to highlight the challenges these voters face, and supports pilot programs and new technologies to test potential solutions. Make Voting Work also promotes efforts to establish consistent approaches for military and civilian voters abroad, including exploring the feasibility of a uniform state law that could potentially establish consistent timelines, requirements and standards for registration, absentee ballot distribution and ballot voting for military and overseas civilian voters covered under UOCAVA.



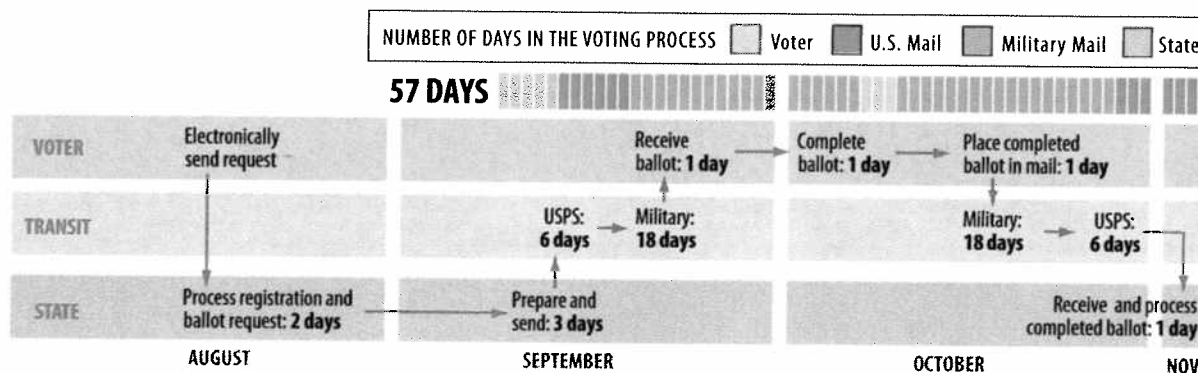
No Time to Vote: Challenges Facing America's Overseas Military Voters Michigan

Overseas military voters from Michigan can fax their ballot requests—but the state requires the ballots to be transmitted to and from voters by postal mail. Because the time needed for ballots to travel by mail takes longer than the time Michigan provides in its process, its military voters abroad would need 13 additional days to have enough time to vote.



No Time to Vote

THE CURRENT VOTING PROCESS



One step Michigan could take to ensure these voters have enough time to vote is to send them blank ballots by fax, e-mail or other electronic means (such as through a Web site). This change would help voters get their ballots much faster and give them more time to return their completed ballots by postal mail. The state also could send out blank ballots to voters earlier in the process, extend the deadline by which completed ballots must be received to be counted or a combination of the two steps that will add at least 13 days to the process.

SOLUTIONS

POSSIBLE FIX

DOES IT PROVIDE ENOUGH TIME TO VOTE?

SEND BLANK BALLOTS OUT EARLIER AND ACCEPT COMPLETED BALLOTS LATER	YES	● TIME TO VOTE
ALLOW MINIMUM 45-DAY TRANSIT TIME FOR BALLOTS	ALREADY IN PLACE	● NO CHANGE
ELIMINATE NOTARY REQUIREMENT	ALREADY IN PLACE	● NO CHANGE
ALLOW ELECTRONIC TRANSMISSION OF BLANK BALLOTS	YES	● TIME TO VOTE
EXPAND USE OF FEDERAL WRITE-IN ABSENTEE BALLOT FOR STATE AND LOCAL ELECTIONS	ALREADY IN PLACE	● TIME TO VOTE

● No Time to Vote:

States that send out their absentee ballots after the date necessary for military overseas voters to have enough time to meet the required deadlines.

At Risk:

States that provide overseas military voters with only five days or less of extra time to complete the voting process.



Time to Vote, But with Concerns:

States that provide enough time to vote, but at a price. Overseas military voters from these states have time to vote only if they return their completed ballots by fax or e-mail—practices that raise concerns about voters' privacy and the security of ballots.



Time to Vote: States that provide overseas military voters with more than five days of extra time—that is, time beyond the absolute minimum needed to return a completed ballot—to allow for any delays in the voting process.



The Pew Charitable Trusts applies the power of knowledge to solve today's most challenging problems. Our Pew Center on the States identifies and advances effective policy approaches to critical issues facing states.

901 E Street NW | Washington, DC 20004 | www.pewcenteronthestates.org

Download the full report by visiting www.pewcenteronthestates.org/makevotingwork

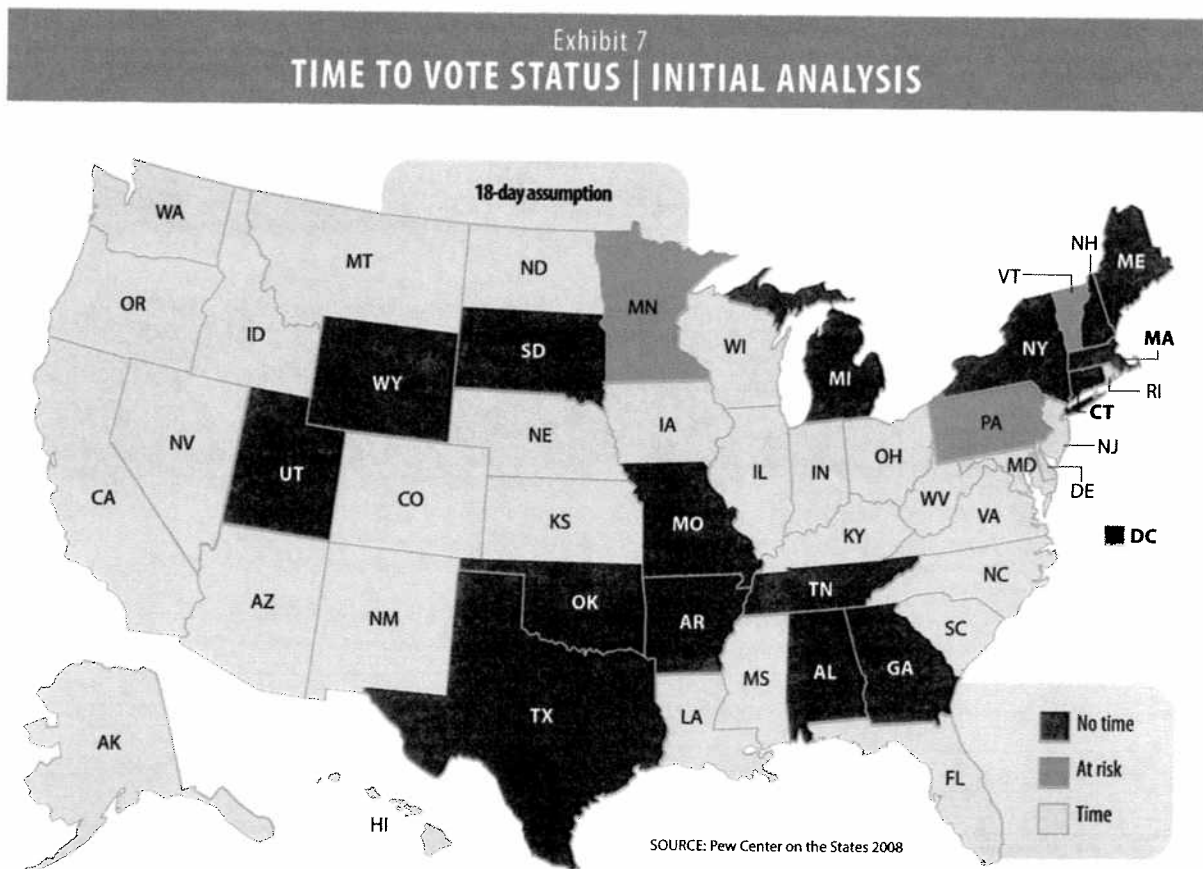
FINDINGS

Three states—Minnesota, Pennsylvania and Vermont—are “at risk” of not providing their overseas military voters enough time to vote because they provide fewer than five days of extra time to accommodate unexpected delays in the process.

Our initial analysis shows that the remaining 31 states allow enough voting time for their military residents stationed overseas—meaning that those voters have more than five business days of extra time in case of delays (Exhibit 7).²²

However, in a majority of the 31 “time to vote” states, that assurance comes at a price. Nineteen of the 31 allow blank ballots to be transmitted and completed ballots to be returned by fax or

e-mail (Exhibit 8). Allowing military voters overseas to return their ballots electronically helps ensure they have time to vote—but it also raises questions about the voters’ privacy and the security of the ballots as well as access to the technology.²³ As the GAO noted in a 2007 report, while alternatives such as electronic and Internet voting “may expedite the absentee voting process, they are more vulnerable to privacy and security compromises than the conventional methods now in use. Electronic and Internet voting require safeguards to limit such vulnerabilities and prevent compromises to votes from intentional actions or inadvertent errors. However, available safeguards may not adequately reduce the risks of compromise.”²⁴



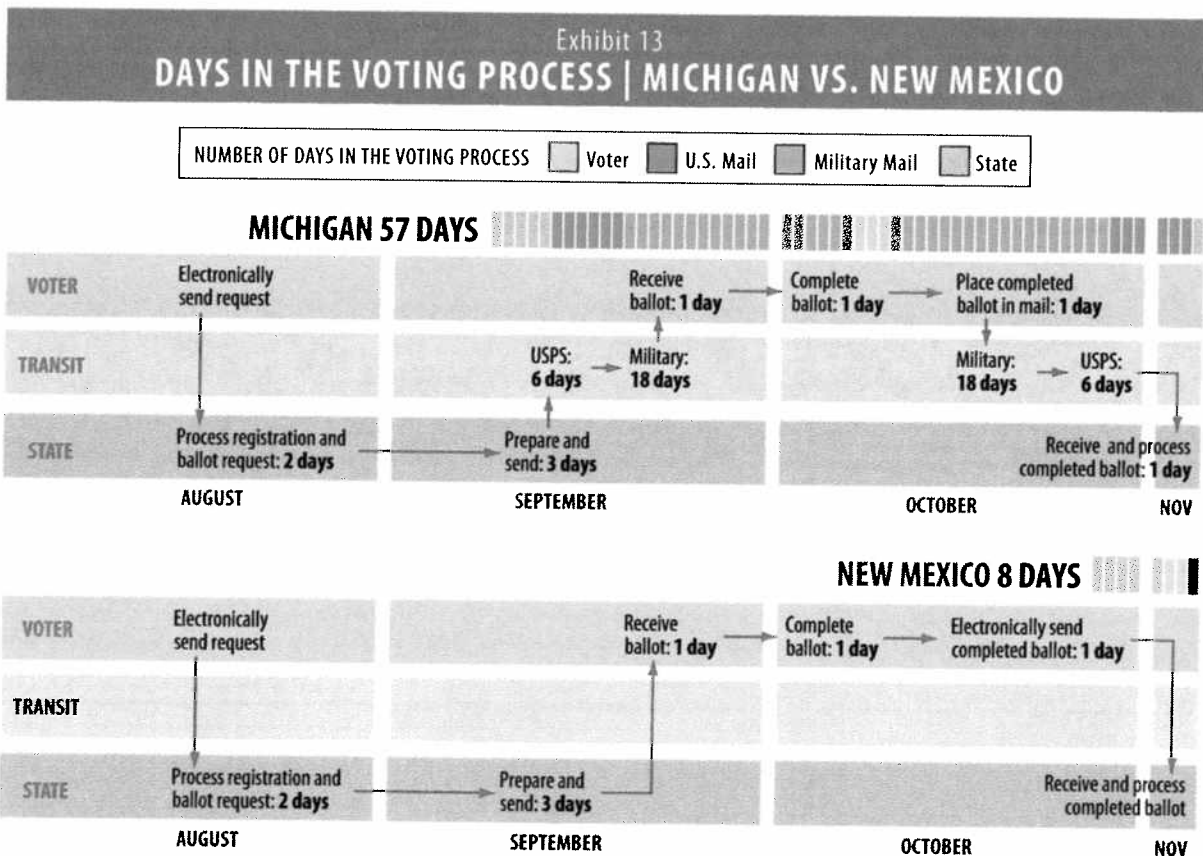
POTENTIAL REFORMS

by fax or e-mail. An additional seven states allow electronic submission of the ballot under particular circumstances (in emergencies or if voters are in a hostile country or war zone).

When it comes to military voters stationed overseas, all 16 “no time to vote” states and the District of Columbia would provide those voters time to vote if they adopted a fully electronic process (Exhibit 12). In fact, they would save voters an average of 40 days.

Comparing New Mexico and Michigan illustrates the benefits of an electronic process (Exhibit 13). The two states’ election systems are similar in a number of respects: neither requires overseas voters to get their completed ballots notarized

before returning them, and both give their residents abroad at least 45 days to complete the voting process after sending them blank ballots. New Mexico disseminates its absentee ballots on September 16; Michigan does so four days later, on September 20. The difference is that New Mexico has a fully electronic process, allowing its overseas voters to use fax or e-mail to register to vote, request a ballot, receive a ballot and submit a completed ballot. Michigan allows its residents abroad to register and request an absentee ballot electronically, but requires all other steps—including sending out blank ballots to and receiving completed ballots from voters—to be done by regular mail. The result? Voters from New Mexico have more time to complete the process, with less hassle. They can electronically submit



SOURCE: Pew Center on the States 2008

Grand Rapids Press

Editorial: Legislature should pass bill that allows soldiers overseas to receive e-mailed ballots

By The Grand Rapids Press

September 04, 2009, 9:34AM

Michigan owes it to military personnel overseas to eliminate voting barriers, while preserving the election system's integrity. Lawmakers should support House legislation that helps ensure those fighting to protect our national security and treasured freedoms have sufficient time to exercise their own freedoms by casting ballots that count.

The Pew Center on the States released a January report that explains there's not enough time after Michigan, 15 other states, and the District of Columbia make absentee ballots available to those deployed overseas for them to meet all required deadlines. Michigan does allow the 45 days for absentee voting recommended by federal officials. But state soldiers need an average of 57 days to obtain ballots by mail, complete and return them in time.

Rep. Vincent Gregory, D-Southfield, has introduced bipartisan legislation that takes a common sense approach to getting ballots to military and other overseas voters sooner via electronic mail. Kent County Reps. David Agema, R-Grandville, Thomas Pearce, R-Rockford, Roy Schmidt, D-Grand Rapids, and Robert Dean, D-Grand Rapids, wisely are backing the bill as co-sponsors.

Under the bill, the Secretary of State's office would be required to put forth rules that allow a county, city, village or township clerk to transmit an absentee voter ballot by electronic mail to a member of the armed services or an overseas voter. This would take the place of ballots sent via the U.S. Postal Service.

The secretary's office also would have to provide procedures for how that absentee voter ballot transmitted by electronic mail would be returned to a clerk. A much faster shipment should provide those overseas sufficient time to complete the ballot and mail it securely back to their local clerk using the postal service.

Ensuring the confidence, security and integrity of the election process is paramount when considering any change. Secretary of State Terri Lynn Land's office has been willing to work with lawmakers to fix the time problem exposed by the Pew report.

An estimated 6 million military and overseas civilian voters have the right to cast absentee ballots in America's federal elections. During the 2008 presidential election, more than a quarter of the ballots requested by U.S. military personnel deployed overseas -- and other eligible voters living abroad -- went either uncollected or uncounted, according to Congressional Research Services. That situation obviously has to be rectified at both the state and federal level.

Legislation was attached to the Department of Defense authorization bill that requires states to do several things, including delivering ballots electronically, eliminating the notary requirement, and sending ballots at least 45 days before the election.

But Michigan lawmakers need not wait for Congress to scrutinize the details of that legislation to act on Mr. Gregory's bill. After resolving the budget crisis, the Legislature should put bringing more military and overseas voters into the electoral process on its short list.

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Many U.S. voters abroad never received 'o8 ballot

By Brian Knowlton

WASHINGTON — More than 1 in 5 American voters living overseas, including those serving in the military, did not receive their official ballots for the 2008 U.S. election, a year in which nearly half of local election jurisdictions reported significant rises in ballot requests from abroad, according to a new survey.

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The survey indicated that the situation was worse for highly mobile military voters: More than one-quarter failed to receive ballots, though that was an improvement over the 36 percent that did not receive them for the 2006 election.

The survey of 24,000 voters in 186 countries was carried out by the nonpartisan Overseas Vote Foundation.

"We have serious data which once again confirm how much of a problem military and overseas voting really is," said Bryan O'Leary, a former Marine Corps fighter pilot who works with the National Defense Committee to help military voters.

A major problem, according to a separate survey by the Pew Center on the States, is that 16 states and the District of Columbia send out absentee ballots after the date necessary for military voters to meet required deadlines; three others allow a minimal five-day cushion.

State performance varied dramatically. Voters from Arizona and Kansas received requested ballots in as little as eight days, the Pew Center found, while some overseas military voters from Alabama waited 88 days.

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Among American voters who did receive ballots, 4 in 10 did not arrive until after mid-October, dangerously close to the election. The military postal service averages 12 to 18 days for one-way delivery, the foundation said.

"Registered to vote. Serving in Afghanistan. Never received a ballot," one soldier wrote to the foundation. "Tried to use the Federal Absentee Write-in process - still required me to mail in the ballot and I was out of time. Am very angry!"

Attempts by some states to apply fax and e-mail technologies have been disappointing. The foundation found that more than 2 in 10 respondents who sent ballot requests by e-mail or fax did not receive them, though some had waited too long before making their request.

"Technology provides laudable solutions, but at the end of the day, it's the people who make the difference," said Chip Levengood, the foundation's chairman.

More than half of people were unaware that, if they have not received a requested ballot in time, they can print out the standardized Federal Absentee Write-in Ballot.

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And many who returned registration forms online did not realize that they also had to print out, sign and mail a copy.

"Short of having a hand that reaches out of the computer and grabs them and shakes them and says, 'You read these instructions or we'll break your legs,' we can't do anything more," said Susan Dzieduszycka-Suinat, president of the Overseas Vote Foundation.

Voter education is a particular problem among overseas voters, given their fluid and far-flung lives. Half of those surveyed by the foundation were voting for the first time, or for the first time from abroad.

Dzieduszycka-Suinat said that the extraordinary challenges faced by overseas voters showed that the states should adopt a simplified, harmonized approach, and also embrace online ballot delivery.

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Report: Half of absentee ballots got to overseas voters too late

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By Leo Shane III, Stars and Stripes
 Mideast edition, Friday, February 6, 2009

WASHINGTON — More than half of overseas voters who tried to get an absentee ballot last year didn't receive one in time for November's election, according to a new survey from the Overseas Vote Foundation.

The results for military voters surveyed were even worse: Less than 44 percent of troops stationed overseas who tried to vote received a ballot in time to fill it out and return it to their local election office. More than one in four never received a ballot at all.

Officials from the foundation said the survey results point to a need to overhaul the absentee ballot process and find ways to ensure those overseas voters aren't shut out of the election process.

"The vast majority (of local election officials) feel that everything is fine the way it is, nothing needs to change," said Susan Dzieduszycka-Suinat, president of the foundation. "Then when we look at the voter data, we see that overseas voters fall through the cracks."

The new report comes just weeks after a report from the Pew Center on the States found that absentee voters in 19 states and the District of Columbia had little or no chance of having their ballots counted because of unrealistic time lines for delivery and verification of the documents.

The survey includes responses collected after the November election from more than 24,000 overseas voters, mostly in Western European countries. Nearly half of them were voting for the first time overseas, but problems of mail delays and confusing registration requirements affected both the new and experienced voters.

Bryan O'Leary, a senior fellow at the National Defense Committee, said that isn't a surprise.

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Military postal officials said all overseas deployed troops needed to mail their completed ballots by Sept. 29 to ensure their arrival by election day, but most voters his group talked to didn't see their ballots until sometime in October. d

Dzieduszycka-Suinat said in response to those complaints the foundation is pushing states to allow blank ballots to be sent to voters via e-mail and fax, a move which could cut the processing time down by several weeks. n

Alec Yasinsac, dean of the School of Computer Sciences at the University of South Alabama, said while some may still have questions about the security of returning completed ballots by electronic methods, sending out blank ballots that way should be an easy decision. b

"The tools are already there, but the states need to adopt legislation to use them," he said.

"Our overseas voters deserve better than what they have now."

Representatives from several Congressional offices attended Thursday's report unveiling, and said they expect lawmakers to introduce new legislation on the issue in the next few weeks.

See the full report here.

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Report: Quarter of overseas votes uncounted

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By Jim Abrams, The Associated Press
Pacific edition, Saturday, May 16, 2009

WASHINGTON — One out of every four ballots requested by military personnel and other Americans living overseas for the 2008 election may have gone uncounted, according to findings released at a Senate hearing Wednesday.

Sen. Charles Schumer, chairman of the Senate Rules and Administration Committee, said the study, while providing only a snapshot of voting patterns, "is enough to show that the balloting process for servicemembers is clearly in need of an overhaul."

The committee, working with the Congressional Research Service, surveyed election offices in seven states with high numbers of military personnel: California, Florida, North Carolina, Pennsylvania, Texas, Washington and West Virginia.

It said that of 441,000 absentee ballots requested by eligible voters living abroad — mainly active-duty and Reserve troops — more than 98,000 were "lost" ballots that were mailed out but never received by election officials. Taking into account 13,500 ballots that were rejected for such reasons as a missing signature or failure to notarize, one-quarter of those requesting a ballot were disenfranchised.

The study found that an additional 11,000 ballots were returned as undeliverable.

Schumer's office said that because a person living abroad must request the absentee ballot and show a clear intention to vote, voter negligence is not thought to be a major factor.

Rather, the New York Democrat said in a statement, there is a chronic problem of military voters being sent a ballot without sufficient time to complete it and send it back.

He cited estimates that a ballot can take up to 13 days to reach an overseas voter.

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Among the states surveyed, California had 30,000 "lost" votes out of 103,000 ballots mailed out.

An additional 3,000 ballots were returned as undeliverable and 4,000 were rejected.

The hearing was to take up possible problems in the Federal Voting Assistance Program, a Pentagon program that handles the election process for military personnel and other overseas voters.

Sen. John Cornyn, R-Texas, on Tuesday filed legislation aimed at ensuring overseas military ballots are delivered promptly and counted at home, the San Antonio Express-News reported. The bill would ensure shipment of ballots is expedited and that they are tracked while in transit, the paper noted.

A similar measure is being championed in the House by Rep. Kevin McCarthy, R-Calif.

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Legal Memorandum

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July 28, 2009



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America's Military Voters: Re-enfranchising the Disenfranchised

Hans A. von Spakovsky and M. Eric Eversole

For many Americans, the 2008 presidential election was historic, both in its outcome and the number of citizens who voted, many for the first time. The overall turnout of the voting-eligible population was 61.7 percent, the highest turnout since the 1964 presidential election.¹ Local election officials in many states reported high levels of voting by many individuals who have not traditionally participated in the election process. The same, however, cannot be said for America's military members and their voting-age dependents ("military voters"). For these voters, especially those serving in dangerous combat zones like Iraq and Afghanistan, the 2008 presidential election was an embarrassing reminder of the difficulties faced by America's men and women in uniform when they attempt to vote.

Military voters have long been disenfranchised—both at the state and federal level—by a voting process that fails to recognize the unique challenges created by a military voter's transitory existence or the delays associated with delivering an absentee ballot to a war zone halfway around the world. Given these soldiers' daily sacrifices and their willingness to defend this nation's freedom, it is incumbent on Americans to remedy this problem and provide U.S. soldiers with the same rights they are being asked to protect. Unless Congress (and the states) finally act to remedy this problem, military personnel will continue to be the largest group of disenfranchised voters in the United States.

Talking Points

- In recent elections, only 5 to 20 percent of eligible military voters cast absentee ballots that were counted.
- This shockingly low participation rate is as severe as any in our nation's history, including that which resulted in the passage of the Voting Rights Act of 1965 to strike down barriers to voting for black Americans.
- The major reason for this disenfranchisement is the transient lives of military voters, the Pentagon's failure to provide these voters with timely registration and absentee voting assistance, and the delays associated with mailing ballots to and from remote locations and war zones.
- These problems could be alleviated with a comprehensive solution that: (1) designates certain military offices as voter registration agencies; (2) mandates that all absentee ballots be mailed to military personnel at least 45 days prior to the election; and (3) requires the military to provide expedited return of completed absentee ballots by international express mail.

This paper, in its entirety, can be found at:
www.heritage.org/Research/LegalIssues/lm0045.cfm

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Current Law

All military personnel and their dependents, as well as overseas citizens, are guaranteed the right to vote by absentee ballot in federal elections by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).² President Ronald Reagan designated the Department of Defense (DOD) to administer the statute, and the department organized the Federal Voting Assistance Program office (FVAP) to provide support to UOCAVA voters.³ Enforcement of the UOCAVA is the responsibility of the U.S. Department of Justice.

In short, the UOCAVA requires all states to “permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office.”⁴ The UOCAVA does not specify the exact number of days prior to the election that absentee ballots must be mailed to overseas voters. However, since 1988 the Department of Justice has filed 35 civil lawsuits against states and local governments arguing that the statute’s guarantee of the right to vote by absentee ballots requires states to mail out such ballots in time to be received and returned by overseas voters.⁵ In 1986, Congress found that

“[b]ased on surveys of the U.S. Postal Service and of military postal authorities, ballots should be mailed to overseas addresses at least 45 days prior to an election in order to ensure adequate time for a ballot to reach a voter and be returned.”⁶ The U.S. Election Assistance Commission recommended the same 45-day transit time in 2004 when it released a report on the best practices for facilitating voting by overseas citizens covered by the UOCAVA.⁷

Disenfranchised Heroes

Despite many states reporting record turnout in 2008, data from the election demonstrates a shockingly low level of participation among military voters.⁸ Take, for example, the treatment of military voters in Minnesota. In a state that prides itself on the nation’s highest voter participation rate—78.2 percent of the eligible population participated in the 2008 presidential election—only 15.8 percent of Minnesota’s 23,346 military members and their voting-age dependents were able to cast an absentee ballot in the same election.⁹ To make matters worse, even if the military voter in Minnesota cast his or her absentee ballot, that ballot was nearly sixteen times more likely to be rejected by local election officials, as compared to other absentee

1. 2008 General Election Turnout Rates, United States Elections Project, *available at* http://elections.gmu.edu/Turnout_2008G.html.
2. 42 U.S.C. § 1973ff *et seq.* The UOCAVA was passed in 1986 to “update and consolidate provisions of current law relating to absentee registration and voting in elections for Federal office by members of the uniformed services and by citizens of the United States who reside abroad.” H.R. Rep. No. 765, 99th Cong., 2nd Sess., at 5 (1986). The predecessor statutes were the Overseas Citizens Voting Rights Act, 42 U.S.C. § 1973dd, and the Federal Voting Assistance Act, 42 U.S.C. § 1973cc.
3. Exec. Order No. 12,642, 53 Fed. Reg. 21,975 (June 8, 1988).
4. 42 U.S.C. § 1973ff-1(1).
5. Cases Raising Claims Under The Uniformed and Overseas Citizens Absentee Voting Act, Civil Rights Division, U.S. Department of Justice, *available at* http://www.usdoj.gov/crt/voting/litigation/caselist.php#uocava_cases
6. H.R. Rep. No. 765, 99th Cong., 2d Sess. 10-11 (1986).
7. Best Practices for Facilitating Voting by U.S. Citizens Covered by the Uniformed and Overseas Citizens Absentee Voting Act, Report of the U.S. Election Assistance Commission (2004); *available at* www.eac.gov.
8. The authors collected data by e-mail and telephone inquiries from 19 of the largest states with military voting populations, including: Alaska, Arizona, Arkansas, California, Delaware, Florida, Idaho, Illinois, Louisiana, Maryland, Minnesota, Missouri, Montana, Nebraska, Pennsylvania, Rhode Island, Texas, West Virginia, and Wisconsin. These states combined have nearly 60 percent of the military voting population.
9. The FVAP collects and provides data regarding the total number of military voters in each state, including Minnesota. These figures are *available at* <http://www.fvap.gov/reference/laws/state-initiatives.html>.

voters statewide.¹⁰ A vast majority of the rejected military ballots—nearly 70 percent—were rejected because the ballot was returned after the election deadline. Ultimately, only 14.4 percent of Minnesota's eligible military voters were able to cast a vote that counted in the 2008 presidential election.

Military personnel move frequently and receive scant assistance from both the military and state voting officials. Consequently, the absentee ballot request rate is extremely low. In the three states with the largest number of military voters—Florida, Texas, and California (accounting for nearly 40 percent of all military voters)—data from each state shows that less than a quarter of military voters and their dependents requested an absentee ballot for the 2008 presidential election. Florida had the highest number of requests with 27.8 percent of nearly 324,000 military voters requesting an absentee ballot. Texas was second with 22.9 percent and California was third with 17.8 percent. All told, of the estimated 943,879 military voters in these three states, only 23.4 percent or 220,595 requested an absentee ballot to vote in the 2008 presidential election. The rate of return of those same absentee ballots was even lower. Only 11.3 percent of the eligible military voters in California actually returned their ballots compared to 20.6 percent in Florida and 13.1 percent in Texas.

These low participation rates, however, were not isolated to Florida, Texas, and California. Other states, like Alaska, Louisiana, Maryland, Missouri, and Pennsylvania—all of which have significant military populations—experienced similar levels of disenfranchisement. The number of military voters that requested an absentee ballot in these five states ranged from 18.5 percent in Alaska to 25.2 percent

in Pennsylvania. However, the number of military voters that were able to cast and have their absentee ballots counted was much lower, ranging from 11.9 percent in Maryland to 19.1 percent in Pennsylvania. Said another way, nearly 80 to 85 percent of military voters were unable to cast an absentee ballot that counted during the 2008 presidential election and, thus, were likely disenfranchised during the election. This low participation rate is as severe as any in the nation's recent history, including that which resulted in the passage of the Voting Rights Act of 1965 to strike down the barriers to registration and turnout that kept black Americans out of the polls.¹¹

The state data further shows that a large number of ballots were mailed, but never returned by the absentee military voter or were returned undelivered to local election officials because they had the wrong mailing address. For example, in California, Florida, and Texas, nearly 34.8 percent of the military absentee ballots that were requested were not returned to the local election official or were returned because of an undeliverable address (i.e., the military voter no longer lived at that address). According to a recent study by the Overseas Vote Foundation (OVF), many of these overseas military ballots may have been lost or significantly delayed by the postal service. The OVF found that nearly 22 percent of respondents to a survey, which included military and overseas voters, never received their requested absentee ballot for the 2008 presidential election.¹² In addition, 10 percent received their absentee ballots less than seven days before the election and 1 percent received their ballots after November 4, 2008. In other words, the 2008 OVF Report found that nearly one-third of its respondents either did not receive

10. Minnesota state data indicates that election officials rejected nearly 8.2 percent of cast military absentee ballots, whereas only 0.5 percent of all absentee ballots statewide were rejected. See *Sheehan v. Franken*, No. 62-CV-09-56, Findings of Facts, Conclusions of Law, and Order for Judgment, at 9 (Minn. Dist. Ct. Apr. 13, 2009), available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/MNfinalorder.pdf>.

11. See Edward Blum, *An Assessment of Voting Right Progress in Mississippi*, American Enterprise Institute, available at www.aei.org/docLib/20060417_MississippiStudy.pdf; Edward Blum and Lauren Campbell, *Assessment of Voting Rights Progress in Jurisdictions Covered Under Section Five of the Voting Rights Act*, American Enterprise Institute, available at www.aei.org/docLib/20060515_BlumCampbellreport.pdf.

12. Overseas Vote Foundation, *2008 OVF Post Election UOCAVA Survey Report and Analysis*, at 20 (Arlington, VA: Feb. 2009) (2008 OVF Report).

their absentee ballot or received it with insufficient time to return it to election officials.

Unfortunately, the 2008 presidential election was not an anomaly. Data collected by the Defense Manpower Data Center and the U.S. Election Assistance Commission showed a similar pattern of disenfranchisement of military voters in the 2006 election. In particular, the Defense Manpower Data Center stated that only 22 percent of active duty military members (which does not include military dependents) voted in the 2006 election.¹³ Of that 22 percent, approximately 16 percent attempted to vote by absentee ballot and 7 percent voted in person.¹⁴ This data corresponds with data collected by the Election Assistance Commission, which found that only 16.5 percent of the estimated 6 million eligible military and overseas voters requested an absentee ballot and only 5.5 percent of these ballots were returned and counted.¹⁵ As was the case in 2008, many military and overseas absentee ballots (nearly 70 percent) were not returned by the voter or were returned as undeliverable.¹⁶ The Election Assistance Commission also found that many ballots were rejected because they were received after the deadline for receipt.¹⁷

Why Military Voters Are Disenfranchised

1. Inability to Participate

The 2008 election data makes it clear that a vast majority of military voters (an estimated 75 to 80 percent)¹⁸ were disenfranchised by their inability

to request an absentee ballot. This failure rests squarely on the DOD and FVAP.

Unlike most Americans, who receive voting assistance from various state agencies in their local communities, military voters frequently live in remote locations far from their voting residences. Overseas military voters cannot simply walk into their local registrar's office, driver's license bureau, or public assistance office and register to vote or update their voter registration information.¹⁹ Nor do they receive voting assistance from third-party voter registration groups because military installations are closed to the public. In short, military voters do not have access to the same level of voting assistance as other Americans and that lack of assistance directly affects their ability to participate in elections.

Recognizing this fact after the 2000 election, Congress enacted the Help America Vote Act of 2002 (HAVA), in part, to ensure that the FVAP provided military voters with sufficient voting assistance. As Congress made clear, the FVAP must "ensure that members of the Armed Forces and their dependents who are qualified to vote have ready access to information regarding voter registration requirements and deadlines (including voter registration), absentee ballot application requirements and deadlines, and the availability of voting assistance officers to assist members and dependents to understand and comply with these requirements."²⁰ The HAVA also requires the FVAP to ensure that military personnel assigned to voting assistance

13. Defense Manpower Data Center, Human Resources Strategic Assessment Program, *2006 Survey Results on Voting Assistance Among Military Members and DoD Civilian Employees*, Survey Note No. 2007-010, at 2 and Table 1 (May 7, 2007) ("2006 DMDC Survey").

14. *Id.*

15. *Uniformed and Overseas Citizens Absentee Voting Act Survey Report Findings*, September 2007, U.S. Election Assistance Commission, at 1, Tables 21c and 22; available at www.eac.gov.

16. *Id.* at Tables 21c, 22, and 25a (showing that 658,855 ballots were not returned by the voter (992,034 – 333,179) and 34,458 ballots were returned to the local election jurisdiction as undeliverable).

17. *Id.* at 1 and Table 25a.

18. The estimate is based on data collected from 19 states (see footnote 8, *supra*) which showed that only 325,000 military voters out of approximately 1.5 million requested an absentee ballot for the 2008 presidential election.

19. Under Sections 5 and 7 of the National Voter Registration Act, state motor vehicle driver's license offices as well public assistance agencies must provide voter registration opportunities to individuals using those offices. 42 U.S.C. §§ 1973gg-3 and 1973gg-5.

20. See 10 U.S.C. § 1566(i)(1).

duty (commonly referred to as voting assistance officers (VAOs)) have the time and the resources needed to provide voting-related services.²¹

Unfortunately, the FVAP's voting assistance program has been a failure. In a post-2004 election report by the DOD Inspector General (IG),²² the IG found that the FVAP was ineffective because only 40 to 50 percent of military members, and a lesser percentage of family members, received voting information from the FVAP or VAOs.²³ The main failure, according to the report, was the FVAP's use of VAOs as the primary means of distributing voting information.²⁴ The report found that the VAO program failed to provide "the consistent, focused attention" necessary to achieve the FVAP's federally mandated mission because the military assigned VAO duty as a collateral duty—that is, the VAO responsibility was a secondary duty to an officer's primary obligations.²⁵ The IG concluded that "senior leadership can expect significant improvement only if a radically different approach is applied."²⁶

That different approach has not been forthcoming. In the 2006 election cycle, the IG once again found that the VAO program did not provide military voters with the necessary registration or absentee ballot information needed to participate in the election.²⁷ As in the 2004 election, the IG found that less than 40 percent of military members and

their families received voting information and assistance from the FVAP and VAOs.²⁸ In fact, the IG noted that only 33 percent of military voters even knew about the Federal Post Card Application (FPCA), the federal form provided by the UOCAVA that allows a military voter to register, update his or her address, or request an absentee ballot.²⁹

The result of this failure is clear: When the FVAP does not provide the requisite assistance to military voters, which civilians receive through numerous state agencies, these voters are significantly less likely to participate in elections. That is at least one reason why only 22 percent of military voters participated in the 2006 federal election,³⁰ even though 41.3 percent of the general population voted in the same election.³¹ It also largely explains the low percentage of military voters who participated in the 2008 presidential election, even though 61.7 percent of the general population voted in that election.³² Military voter participation rates will only increase, as noted by the IG's 2004 report, when the FVAP dramatically changes its voting assistance program and provides consistent and timely voter-related services.

2. Lost and Undeliverable Ballots

The 2008 data also shows that a significant number of military ballots (approximately 33 percent of the total requested)³³ were never returned to local election officials or were returned as undeliverable.

21. *Id.* § 1566(f)(2).

22. Department of Defense Inspector General, *Evaluation of the Voting Assistance Program*, Report No. IE-2005-001 (Mar. 31, 2005), http://www.dodig.mil/inspections/IE/Reports/Final_VoterAssistanceProgram.pdf.

23. *Id.* at 17, 22.

24. *Id.* at 25.

25. *Id.* at 22.

26. *Id.* at 26.

27. DOD Inspector General, *Evaluation of the Voting Assistance Program*, Report No. IE-2007-004 (Mar. 31, 2007), available at http://www.dodig.mil/inspections/IE/Reports/Final_2006%20Federal%20Voting%20Assistance%20Program_Mar%202007.pdf; see also H. Con. Res. 388, 110th Congress (2008).

28. *Id.* at 6.

29. *Id.*

30. Defense Manpower Data Center, Human Resources Strategic Assessment Program, *2006 Survey Results on Voting Assistance Among Military members and DoD Civilian Employees*, Survey Note No. 20007-010, Table 1 (May 7, 2007).

31. 2008 General Election Turnout Rates, United States Elections Project.

32. *Id.*

Once again, both the DOD and FVAP are primarily responsible for this failure.

Given the transitory nature of military voters, who typically move every two to three years and often deploy for months on end, mailing addresses frequently change and quickly become obsolete. It is difficult for the military voter, as well as their state of residence, to keep up with these changes. As a result, many military ballots are sent to wrong addresses and, thus, are returned as undeliverable.

The failure, again, rests with the FVAP and, more specifically, its failure to provide consistent and timely voter assistance—as noted in the IG's 2004 election report. If military voters were provided voting assistance on a consistent and timely basis (i.e., each time they move or deploy to a new duty station), such aid would ensure that states receive timely updates regarding a military voter's change of address and, thus, reduce the number of absentee ballots sent to the wrong address.

In addition, the Military Postal Service Agency (MPSA) must do more to ensure that ballots are sent and received in a timely manner. The delivery of mail, especially to war zones, is a difficult task. In 2004, the Government Accountability Office (GAO) found that while ballot transit times (one way) generally met the 12- to 18-day standard required by Army regulations,³⁴ nearly 25 percent of all mail took *more* than 18 days to deliver.³⁵ Further, GAO reported that “[n]early half [of interviewed military members] said that, after arriving in theater, they waited more than 4 weeks to get their mail, and many commented that some mail took as long as 4 months to work its way through

the system.”³⁶ The 2008 OVF study also demonstrates that mail delivery problems continue to hamper the delivery of absentee ballots to foreign locations. Ballot delivery has to be a priority for the DOD and the MPSA.

3. Not Enough Time to Vote

Every federal agency and non-profit group examining the issue of ballot delivery times to military voters in war zones has concluded that ballots need to be sent *at least* 45 days before the state deadline for receiving absentee ballots. In fact, some government officials, like the chief of operations for the MPSA, recommend that absentee ballots be sent *60 days* before the state deadline. These recommendations are based on two critical factors: (1) it takes *at least* 12 to 18 days for a ballot to make the one-way transit from an election official to a designated mailbox in a combat zone,³⁷ and (2) military exigencies (i.e., fighting the war) further delay the delivery of ballots to military voters. In other words, it takes at least 36 days of mail time (18 days each way) for a ballot to be sent to and from a war zone and some additional amount of time to account for military exigencies.

Unfortunately, nearly one-third of the states refuse to follow the 45-day standard.³⁸ In fact, ten states (Arizona, California, Colorado, Connecticut, Hawaii, Massachusetts, Minnesota, New Hampshire, Oklahoma and Vermont) give military voters 35 or less days to receive, cast, and return their ballots before the state deadline. Not only does 35 days fail to account for mail delivery times, it provides no time for the military voter to receive and cast the absentee ballot. By refusing to follow the

33. The estimate is based on data collected from 19 states (see footnote 8, *supra*) which showed that approximately 106,000 of the 325,000 that were sent to military voters in the 2008 presidential election were not returned by the voter.

34. U.S. Government Accountability Office, *Operation Iraqi Freedom: Long-standing Problems Hampering Mail Delivery Need to Be Resolved*, Report No. GAO-04-484, at 13 (Washington, D.C.: 2004).

35. *Id.*

36. *Id.* at 15.

37. See Government Accountability Office, *Operation Iraqi Freedom: Long-standing Problems Hampering Mail Delivery Need to Be Resolved*, GAO-04-484, at 10-12 (April 14, 2004). However, the same study found that nearly 25 percent of test letters sent to war zones took more than 18 days. *Id.* at 13.

38. The state deadlines for mailing and receiving absentee ballots from military voters have been compiled in the FVAP's "Voting Assistance Guide," available at <http://www.fvap.gov/vao/guide.html>.

45-day standard, these ten states led the nation in a rather dubious category: the systematic disenfranchisement of military voters. Six additional states (Alabama, Alaska, Nevada, New Jersey, Wisconsin, and Wyoming) allow military voters less than 40 days to receive and return their absentee ballots.

Unfortunately, the voters in these states receive their ballots so close to the election that the voter does not have time to return it or, even if the ballot is returned, it arrives after the election. This fact was evident in the 2008 presidential election in Minnesota, where absentee ballots were sent to military voters only 30 days before the election. According to data provided by the state, approximately 8 percent of military absentee ballots that were returned to local election officials were rejected, whereas only 0.5 percent of 300,000 absentee ballots were rejected statewide.³⁹ The higher rejection rate is caused primarily by the number of absentee ballots (nearly 70 percent of the rejected military and overseas absentee ballots) that were delivered after the election deadline. If Minnesota had used the 45-day standard (i.e., it would have given military voters an additional 10 or 15 days to receive and return their ballots), a vast majority (if not all) of the late arriving military ballots would have been counted—potentially changing the outcome of one of the closest Senate races in the state's history.

4. Rejected for Other State Law Reasons

In addition to ballots that are rejected for being late, states also reject ballots that fail to adhere to a variety of state laws. For example, ballots are frequently rejected because the absentee ballot or absentee ballot envelope are not signed or dated by the voter or do not have the voter's address. Some states also reject ballots if they are sent to the wrong jurisdiction or if they lack a postmark showing that the ballot was cast before the election. In addition, some states require a witness or notary to sign the military voter's absentee ballot or the absentee ballot envelope to verify the identity of a voter. Finally, a few states have rejected absentee

ballots when the absentee ballot or absentee ballot envelope was not printed on the correct paper weight or were printed on the wrong size paper.

While some of the state law bases for rejecting military absentee ballots are dubious at best, these requirements impact relatively few absentee ballots. For example, in Florida during the 2008 presidential election, only 1 percent of the 66,668 ballots that were returned by absentee military voters were rejected. Approximately one-half of these ballots appeared to be rejected because they arrived after the state deadline. The other half (about 330 ballots) were rejected for a variety of reasons, including (1) the ballot or ballot envelope was not signed by the voter; (2) the absentee voter's signature did not match the one on file; (3) the voter sent two ballots and, thus, one was rejected for being a duplicate; and (4) the voter no longer lived in the county or was registered to vote in a different county.

Pennsylvania also had a low rejection rate for absentee military ballots in the 2008 presidential election. According to data provided by state election officials, only 0.4 percent of 15,523 military absentee ballots were not counted in the election. Like Florida, approximately one-half of the absentee ballots were rejected because they were returned after the state's deadline. The other half was rejected for some other state law requirement.

Florida's and Pennsylvania's experiences appear to be consistent with other states that were surveyed for this study. Excluding ballots that were returned after the election deadline, most states had a rejection rate of military ballots between 1 and 4 percent.

Failure to Act

If the disenfranchisement of military voters was a freight train, Congress heard its whistle long before the 2008 presidential election and, nevertheless, stood by as the train ran over military voters. The leadership in both the U.S. House of Representatives and the U.S. Senate share equal responsibility for this failure.

39. Sheehan v. Franken, No. 62-CV-09-56, Findings of Facts, Conclusions of Law, and Order for Judgment, at 9 (Minn. Dist. Ct. Apr. 13, 2009), available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/MNfinalorder.pdf>.

Congress was well aware of the difficulties faced by military voters prior to the 2008 presidential election, as evidenced by the reports and studies issued on prior elections by various agencies including the U.S. Election Assistance Commission. In response to these studies, Representative Kevin McCarthy (R-CA) introduced legislation in May 2008 that would have required the DOD and FVAP to collect absentee ballots from overseas military members on the Friday before the election and deliver them stateside by express air transport.⁴⁰ Senator John Cornyn (R-TX) sponsored a nearly identical bill in the Senate.⁴¹ Both bills would have shortened the delivery time for overseas ballots from three or four weeks to four to seven days—meaning that thousands of ballots that were rejected in 2008 would have counted.

Representative Roy Blunt (R-MO) also introduced a congressional resolution in July 2008 to address the FVAP's failure to provide sufficient assistance to military voters.⁴² The resolution required the FVAP to provide military voters with monthly notices regarding their opportunities to request an absentee ballot. The resolution also would have provided Congress with critical pre-election reports regarding the FVAP's efforts to ensure that military voters were provided with election assistance.

Unfortunately, the leadership in the House and the Senate either ignored the legislation or refused to act until it was too late for the bills to be effective. For example, even though Representative Blunt introduced his resolution in July 2008, House leadership did not allow a vote on the resolution until September 17, 2008—that is, 48 days before the November 4, 2008, election. The two-month delay prevented the resolution from providing any real benefit to military voters.

Likewise, Representative McCarthy's bill never made it out of the House Administration Committee chaired by Representative Robert Brady (D-PA). Senator Cornyn's bill fared a little better and was voted out of the Senate on October 1, 2008. How-

ever, House Speaker Nancy Pelosi (D-CA) did not bring the legislation to the floor for a vote and the bill ultimately expired at the end of the 110th Congress.

Practical Solutions

Military voters should not suffer another election where only 15 to 20 percent of them are able to vote. Significant improvement, however, does not require significant change. Four minor modifications to existing federal law would directly address the lack of assistance and timing issue and, more importantly, would substantially improve participation rates among military voters.

1. Designate Military Offices as Voter Registration Agencies. To the extent that Congress wants to ensure that military voters receive adequate assistance, it must legislate a different approach—an approach that the FVAP has been unwilling to implement. Like state driver's license and public assistance offices designated as voter registration agencies under section 7 of the National Voter Registration Act, certain military offices should be designated as voter registration agencies through an amendment to the NVRA. The DOD could provide voting-related assistance and registration at locations where military members already receive administrative support or social services (e.g., pay offices, military ID offices, etc.). Not only would such an approach greatly improve the consistency of the FVAP, it would ensure that military voters receive information when they need it most—when they have a permanent change of duty station or when they deploy.

For example, in the Navy, sailors are required to visit their personnel support detachment when they check in to a new base. Soldiers in the Army have a similar obligation. As part of that visit, sailors and soldiers are required to complete various federal forms to update their contact information, the address of their dependents, and their Servicemen's Group Life Insurance. Having the military member complete one additional form, the federal

40. H.R. 5673.

41. S. 3073.

42. H. Con. Res. 388.

post card application, will not materially burden the process. It would, however, ensure that military personnel have an opportunity to complete a new federal post card application when their addresses have changed. Completion of this form and its forwarding to the relevant state election official by the designated DOD office would greatly increase participation rates, as well as the accuracy of information maintained by state election officials on military voters.

Senator Cornyn has introduced a bill that would implement just such a procedure by amending the NVRA and require DOD to “designate an office on each installation of the Armed Forces” as a voter registration agency.⁴³ Senator Charles Schumer (D-NY) likewise has incorporated this concept in a bill that he recently introduced.⁴⁴

2. Make the 45-Day Standard Mandatory under the UOCAVA. Currently, the federal law that requires states to mail absentee ballots to military voters, the UOCAVA, does not specify when states are required to mail absentee ballots to military and overseas citizens. As noted previously, this oversight has allowed numerous states to avoid sending ballots at least 45 days before an election. This failure can be easily rectified with a minor modification to 42 U.S.C. § 1973ff-1:

Each State shall—(1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office, and

(2) ensure that absentee ballots are sent at least 45 days before the state deadline for receiving absentee ballots unless such ballots are sent by express mail or other elec-

tronic means that will ensure that the ballots are received with sufficient time to be returned to state election officials.

Such a change would greatly reduce the number of ballots that are rejected because they were received after the state’s deadline for receiving absentee ballots. This statutory change would complement a bill already introduced by Senator Schumer that would amend the UOCAVA to require states to send military and overseas ballots at least 45 days before the election.⁴⁵

3. Require the Military to Provide Expedited Return Delivery. Senator Cornyn and Representative McCarthy have re-introduced their legislation to require the FVAP to use expedited delivery methods to return ballots from overseas military members in the 111th Congress.⁴⁶ Even if Congress mandates a 45-day standard, as discussed above, this legislation serves an important function: providing an expedited delivery and return mechanism for overseas military absentee ballots.

Notwithstanding the best efforts of states to send ballots at least 45 days before the state deadline, there are numerous factors that delay the delivery of mail to and from war zones. In fact, as noted in the 2004 GAO report, a sizeable percentage of mail (25 percent) took longer than 18 days to deliver and some mail took as much as 4 months to arrive overseas. Senator Cornyn’s and Representative McCarthy’s legislation helps to resolve the uncertainty regarding mail delivery times and provides a guarantee that an overseas military voter’s ballot will be delivered to state election officials by the election deadline.

One serious shortcoming in the bills introduced by Cornyn, McCarthy, and Schumer is that they limit the DOD to using the United States Postal Ser-

43. S. 1265.

44. S. 1415, Sec. 9. Schumer’s bill was passed by the Senate on July 23, 2009 as Amendment No. 1764 to S. 1390, the FY10 National Defense Authorization Act.

45. S. 1415, Sec. 5. See also Amendment No. 1764 to S. 1390, the FY10 National Defense Authorization Act.

46. H.R. 2393 and S. 1026. Such a requirement is also contained in Senator Schumer’s bill, S. 1415, in section 5. However, the bill does not provide the DOD with a date certain by which it must collect absentee ballots or guarantee the return delivery of these ballots. In short, this bill fails to provide any assurance that the overseas military ballot will be returned to the United States in order to be counted.

vice for express mail service, despite the fact that there are a number of other private companies that provide such service. The DOD should be allowed to accept competitive bids from all companies that provide international express mail service, including the USPS, so that this service is provided at the lowest cost possible for the American taxpayer.⁴⁷

4. Eliminate Non-Material State Law Reasons for Rejecting a Ballot. There are certain state requirements for the absentee ballot process that could be eliminated. For example, absentee ballot requests and absentee ballots, including the official UOCAVA post card ballots, should not be rejected by state election authorities because of state restrictions on the paper type, weight, or size of such election materials. Senator Schumer's bill, S. 1415, would eliminate such requirements.

However, state requirements that the signatures of absentee ballot voters be witnessed or notarized are necessary to protect the security and integrity of the absentee ballot process. Absentee ballots are unfortunately one of the biggest sources of voter fraud. Contrary to what some would think, neither of these requirements is difficult for military voters to meet. All military personnel, regardless of their location, should be able to obtain the signature of a

witness. Further, federal law mandates that a wide variety of military personnel, including Judge Advocate General Corps, are federal notaries and, thus, overseas military members should have little trouble finding a notary.⁴⁸ The most that needs to be done is to ensure that all states that require notaries will accept the notarization of JAGs and any other military personnel who are authorized notaries.

If Members of Congress and their leadership are serious about protecting the rights of all voters, and, as they often claim, concerned about the welfare of American military personnel, they can provide actual proof of those sentiment by ensuring that this country's military men and women have the same right to vote as all other Americans. These four very simple legislative changes could make the difference in guaranteeing the right to vote of the largest group of disenfranchised American voters. They deserve America's support.

—Hans A. von Spakovsky is a Legal Scholar in the Center for Legal and Judicial Studies at the Heritage Foundation and a former Commissioner on the Federal Election Commission. Eric Eversole is a former active duty officer in the Navy JAG Corps and former lawyer in the Voting Section of the Civil Rights Division of the U.S. Department of Justice.

47. This limitation is apparently in the bill because John E. Potter, United States Postmaster General, protested to the Senate that no private company should be allowed to interfere with the USPS's monopoly on mail service. See Letter from John E. Potter to Senator Robert F. Bennett, Ranking Member, Committee on Rules and Administration, United States Senate (June 10, 2008).

48. 10 U.S.C. § 1044 (2008).